

DE 78-46 - November 2, 1978

**Campaign Funds; Disposition Of Surplus Funds; Campaign Loans.
ss. 106.011, 106.07, 106.141, F.S. (1977); ch. 77-175 Laws of Florida**

To: Orren Smith, Holmes County Advertiser, P.O. Box 7, Bonifay, Florida 32425

Prepared by: Division of Elections

Your letter of October 2, 1978 requests an advisory opinion of this office in answer to the following question:

"On Sept. 5, 1978, I borrowed \$1,000.00 from The Bank of Bonifay as a personal loan and donated it to my campaign. As of this date, I have paid all of my campaign expenses and have a balance left in my account of \$389.49. I would like to know if I can spend this balance as a payment on the note of the Bank of Bonifay?"

As discussed below, your inquiry is answered in the negative.

On September 11, 1978, the Division of Elections received and filed your campaign treasurer's report reflecting contributions and expenditures for the period September 4-9, 1978. The portion of the report indicating contributions received contains an entry for September 5, 1978 for a \$1,000 contribution from Orren Smith, Holmes Avenue, Bonifay, Florida. This appears to be the contribution to which you refer in your question being answered here.

Florida's present election code obviously contemplates that loans can be utilized in political campaigns in this state. The definition of "contribution" was amended in 1977 to add the word "loan." s. 106.011 (3)(a), F.S. (1977), as amended by ch. 77-175, Laws of Florida. Therefore, any candidate may receive a loan from any person, including himself, to fund his/her political campaign.

When a loan is made to a campaign, it must be reported by the receiving candidate, s. 106.07(4)(c), F. S. On the next report subsequent to receipt of the loan, the statute requires the following be included in the report:

"Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans."
Id.

This reporting is done on the contribution section of the campaign treasurer's report.

The loan to which you refer was not so reported. The report filed with the division merely indicates a contribution, apparently unrestricted, from the candidate to his own campaign. Even though a

candidate may have borrowed from a financial institution, if the funds so received are deposited in that individual's personal account and later transferred to the campaign account, they are within the sole control and direction of the candidate and lose the loan status unless so indicated on the treasurer's report evidencing the intent of the contributor. This must be indicated contemporaneously with the receipt of a loan and cannot be done at some future date. To find otherwise would render meaningless the disposition of surplus funds statute, s. 106.141, F.S.

A loan made to a campaign constitutes an obligation of that campaign. Until such time as all outstanding financial obligations are satisfied by sufficient funds on deposit, there can be no surplus funds, s. 106.141(4), F.S.; See DE 78-6 (February 14, 1978). Once all previously reported loans and other obligations have been satisfied, any remaining funds in the campaign account may be returned on a pro rata basis to contributors or given to the appropriate governmental general revenue fund.

Since the treasurer's report indicating the \$1,000 contribution does not identify it as a loan, it can not now be regarded as one and paid back as such from campaign funds. The bank loan which was deposited in the campaign account is personal to the candidate himself and may not be paid with money remaining in the campaign account. The money remaining in that account must be disposed within ninety (90) days of the last election in which the candidate participated in the manner provided in s. 106.141, F.S.

SUMMARY

Failure to identify a contribution received by a candidate as a loan prevents repayment of that contribution from the campaign account.